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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Beverly James, No. CV-15-02382-PHX-NVW
9

10 Plaintiff,

ORDER

11 v.

12 Diversified Consultants, Inc.,

13 Defendant.

14
15 Before the Court is Defendant's Motion to Dismiss (Doc. 9). The time to file a
16 response expired on December 21, 2015, and Plaintiff has failed to file a response.
17 LRCiv 7.2(c). A party that fails to respond to a motion may be deemed to consent to
18 granting of the motion and allow the Court to dispose of the motion summarily. LRCiv
19 7.2(i). Because Plaintiff has failed to respond to the Motion to Dismiss, the Complaint
20 could be dismissed under Rule 7.2(i) on those grounds alone.

21 However, the Court has considered Defendant's Motion, and the Motion will be
22 granted on its merits pursuant to Rules 8(a) and 12(b)(6) of the Federal Rules of Civil
23 Procedure for the reasons stated in the Motion. First, the Complaint (*see* Doc. 1-1 at 2)
24 does not contain sufficient factual allegations to state a claim under the Fair Debt
25 Collection Practices Act, 15 U.S.C. § 1692g(b). Under § 1692g(b), if a consumer
26 properly notifies a debt collector that the debt in question is disputed, the debt collector
27 "shall cease collection" until it provides verification of the debt. The Complaint does not
28 specify any way in which Defendant violated this mandate to "cease collection." The

1 allegation that Defendant failed to verify the debt does not, by itself, give rise to a claim
2 under § 1692g(b). *See Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 940 (9th Cir.
3 2007). Second, the Complaint does not advance a cognizable theory under the Federal
4 Trade Commission Act, 15 U.S.C. § 45, because the Act does not provide a private cause
5 of action. *See Carlson v. Coca-Cola Co.*, 483 F.2d 279, 280 (9th Cir. 1973). Because
6 Plaintiff fails to state any claims upon which relief could be granted, the Complaint will
7 be dismissed.

8 Leave to amend should be freely given “when justice so requires.” Fed. R. Civ. P.
9 15(a)(2). Here, Plaintiff has failed to respond to the Motion to Dismiss and has not filed
10 an amended complaint within the timeline set forth in the Court’s prior order (Doc. 7).
11 However, these omissions are viewed with leniency because Plaintiff is *pro se*, has not
12 shown bad faith, and has not yet amended the Complaint at all. Moreover, although
13 amending the Federal Trade Commission Act claim would be futile, an amendment to the
14 Fair Debt Collection Practices Act claim might cure the deficiencies identified in the
15 Motion to Dismiss. Thus, leave to amend will be granted, but only once, and only as to
16 the Fair Debt Collection Practices Act claim.

17 IT IS THEREFORE ORDERED that Defendant’s Motion to Dismiss (Doc. 9) is
18 granted. Plaintiff’s claim under the Federal Trade Commission Act is dismissed with
19 prejudice. The Complaint is otherwise dismissed with leave to amend as set forth below.

20 IT IS FURTHER ORDERED that Plaintiff may file an amended complaint by
21 January 12, 2016, in which any new allegations must pertain to the circumstances giving
22 rise to Plaintiff’s claim under the Fair Debt Collection Practices Act. If by that date
23 Plaintiff has not filed an amended complaint, this action will be dismissed with prejudice.

24 Dated this 29th day of December, 2015.

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Neil V. Wake
United States District Judge